

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LESLIE PURNELL,

Plaintiff,

v.

Case No. 05-CV-73384-DT

ARROW FINANCIAL SERVICES, LLC,

Defendant.

**OPINION AND ORDER DENYING PLAINTIFF'S
"MOTION TO PERMIT REMOTE TESTIMONY"**

Pending before the court is Plaintiff Leslie Purnell's "Motion to Permit Remote Testimony," which was filed on February 1, 2007. Defendant Arrow Financial Services responded in opposition on the same day. The court will deny the motion.

Federal Rule of Civil Procedure 43(a) states that "[t]he court may, for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location." The court is not persuaded that Plaintiff has shown good cause in compelling circumstances. Perhaps most importantly, Plaintiff brings his motion on the eve of trial even though he has already deposed the witness and has known for several months that the testimony might be useful at trial. Further, the mere inconvenience of transporting the witness from out of state would appear to the court to fall short of a compelling circumstance or, for that matter, good cause. In addition, the court is mindful of Defendant's opposition and claims of prejudice, including the allegation that Plaintiff is merely trying to reopen discovery and ask questions that were omitted at the deposition. The court will adhere to the stated preference in Rule 43 for live testimony

taken in open court, which is an option that is not foreclosed in this case for Plaintiff's witness. Accordingly,

IT IS ORDERED that Plaintiff's "Motion to Permit Remote Testimony" [Dkt # 57] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 2, 2007

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 2, 2007, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522